

KÜRZERE ABHANDLUNGEN
SHORT ARTICLES AND COMMENTS

Japanese Law Schools: “A Glass Half Full”

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*You can't always get what you want
But if you try sometimes well you might find
You get what you need*

– The Rolling Stones –

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Last year, Professor Colin P.A. Jones wrote a thought provoking essay for this journal regarding the status of the Japanese law school system.¹ His comments were well-reasoned, accurate and insightful and, for the most part, largely consistent with my own view of the many failings of the law school system and of the challenges that lie ahead. While he preferred the “Road to Nowhere” lyrics of The Talking Heads² as his theme

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1 C.P.A. JONES, Japan’s New Law Schools: The Story So Far, ZJapanR/J.Japan.L. 27 (2009) 248.

2 “Road to Nowhere,” lyrics by Jerry Harrison, David Byrne, Tina Weymouth, and Chris Frantz (from Talking Heads “Studio Album” released July 15, 1985).

song, I suggest “You Can’t Always Get What You Want” by The Rolling Stones³ as a more apt anthem for the law school system.⁴

This essay will argue that, notwithstanding the many problems faced by Japanese law schools, there have been many accomplishments in the past six years that merit recognition and encouragement. Many articles critical of this radical reform initiative have been published since 2004 when the system launched, but few have endeavored to highlight the successes. In essence, Japan may not be getting all that it could from the law school system, but it is certainly getting a lot of what it needs.

For purposes of this essay, I do not intend to recount all of the criticisms justly leveled at the Japanese law school system, nor do I intend to address, in great detail, the reasons advanced to explain the how, why and where by which the law school reforms seem to have gone awry. We must leave for a much later day an accounting of whether the merits of the reform were worth the total social costs. That is an important calculation to be sure, but one that will not be possible to make for many years yet to come.

My simple goal here is to highlight some of the positive attributes of the law school system so that readers will have a sense of the prodigious achievements since Japanese law schools first opened their doors to students. This will hopefully give critics and supporters alike a better balanced position from which to formulate a strategy for making realistic adjustments to the system in order to secure the success of law schools, and their students, in the future.

I. FROM ZERO TO 68 IN UNDER THREE YEARS

For a good sense of perspective, it is worth observing at the outset that Japan went from no professional law schools to 68⁵ in the short period beginning on June 12, 2001, the day The Justice System Reform Council (JSRC) released its final Recommendations⁶ calling for sweeping reforms to the justice system in Japan, including the establishment of post-graduate law schools, and ending on April 1, 2004, when the new law schools opened. The legal profession and the universities managed to marshal the resources necessary to open law schools across the entire country in one fell swoop. This entailed,

3 “You Can’t Always Get What You Want,” lyrics by Mick Jagger and Keith Richards (from The Rolling Stones “Let It Bleed” released September 5, 1969).

4 Another potential anthem was suggested by S. STEELE, *Legal Education Reform in Japan: Teachers, Leave Us Kids Alone?*, in: *Australian Journal of Asian Law* 3 (2005) 7. The reference is, of course, to “Another Brick In The Wall,” lyrics by Roger Waters (from Pink Floyd, “The Wall” released on December 8, 1979).

5 Six additional schools were added the following year bringing the total to 74.

6 The Justice System Reform Council, “Recommendations of the Justice Reform Council – For a Justice System to Support Japan in the 21st Century –” June 12, 2001), available online at www.kantei.go.jp/foreign/policy/sihou/singikai/990612_e.html (last accessed on October 2, 2010).

among other things, building educational facilities⁷ suitable for a new style of law school education, hiring faculty from academia and practice (including judges, prosecutors, and private attorneys), retraining existing faculty in “two-way” educational techniques, developing entrance exams, preparing new textbooks, revamping curricula, and putting an administrative infrastructure in place to make it all work. If the law school system did nothing more, it would be an impressive exercise in social activism by almost any measure.

II. RISING EXPECTATIONS MEET POLITICAL REALITIES

The launch of the new law school system, from whole cloth in a compressed period of time, required speedy decision-making and compromise from a broad array of stakeholders.⁸ Many of these stakeholders had deeply entrenched vested interests and a demonstrated resistance to reform.

In surprisingly frank language, the Recommendations of the JSRC appropriately laid the blame for past failures at reform squarely at the feet of the very same parties that would be required to play major roles in making the law school system a success. The JSRC bluntly wrote in the Conclusion of the Recommendations as follows:

One reason why such a huge reform must be carried out all at once is that it is clear there have been problems in past efforts to reform and improve of the justice system. *All three branches of the legal profession should seriously reflect on the fact that the reforms of the Japanese justice system that have been carried out heretofore, mainly by the three branches of the legal profession, can hardly be said to have responded flexibly to changes in the society and economy.* While paying due heed to the independence of the judiciary, the reforms and improvements of the justice system this time must be carried out in a manner that is visible to and easily understood by the general public, with the major objectives of making clear the locus of responsibility, responding properly to social and economic conditions and to the needs of the people, and securing and strengthening accountability and transparency, without being imprisoned by past history. (*Emphasis added*)⁹

7 Pundits, including this author, have remarked only half-jokingly that the big winners of the law school system were the construction companies.

8 The main stakeholders with an interest in protecting the status quo ante were, of course, the Supreme Court, the Ministry of Justice and Nichibenren, representing collectively the judges, prosecutors, and private attorneys. Law professors who were not interested in switching their seats from undergraduate law faculties into the new law schools were also major stakeholders in the old system. Each of these groups had a measure of influence over important segments of entry into the law profession and stood to lose some of that influence as the training of future lawyers shifted to the new law school system.

9 REFORM COUNCIL, *supra* note 6.

The JSRC went on to chastise “all three branches” (to coin a phrase, “the Bamboo Triangle + 1” of judges, prosecutors and the private bar, plus legal scholars) and to warn readers of the perils of leaving the proverbial fox in charge of the hen house:

Of course, it is necessary to proceed with reforms and improvements in the system while making reference to the practical and specialized views of the courts, the public prosecutors offices, the bar associations and legal scholars. Yet *how the justice system should be (shihô no arikata) is not something that should ever be allowed to be decided in accordance with the wishes only of the three branches of the legal profession, as was the case in the past.* Moreover, extra care should be taken so that such a perception never is held again. To that end, it is incumbent on the three branches of the legal profession to sincerely accept external assessments and to respond to them appropriately. Most important of all is to fully draw out the views and consciousness of the actual users of the justice system and to reflect them appropriately in the reforms and improvements of that system. To verify users’ views empirically, necessary surveys, etc., should be conducted regularly and continuously, and reforms and improvements in the system should be undertaken to meet the expectations of the people. (*Emphasis added*)¹⁰

Readers of the Recommendations were not wrong to hope, or even expect, that the reform initiatives proposed by the JSRC were likely to produce the desired results precisely because they purported to reflect a broad social consensus. The reforms were ultimately adopted into law by the politicians, further lending credence to the feeling that this was, at last, the real thing.¹¹

Expectations rose that the creation of law schools could effectively pry open the artificial barriers blocking access to the bar, thus freeing legal education from the constraints of teaching to the exam. Perhaps for the first time, a powerful and diverse constituency made up of universities, which had expended considerable time and expense to establish law schools, as well as their professors from academia and practice, had a vested interest in making sure graduates would receive fair and equal access to the bar.

The law school system seemed the perfect antidote to what ailed the legal profession. It promised post-graduate “American style law schools” where a diverse and vibrant student body, liberated from cram school stresses by the promise of an 80% passing rate,

10 *Id.* It would be misleading to suggest that all judges, prosecutors, attorneys and academics opposed the Recommendations. Many were strong proponents and could see the merit of upgrading the system of legal education as well as materially increasing the number of legal professionals.

11 For an excellent recounting of the post-WWII efforts at legal reform, including the work of the JSRC and other interested parties, see, S. MIYAZAWA, *Law Reform, Lawyers, and Access to Justice*, appearing as Chapter 2 in: G.P. McAlinn (ed.), *Japanese Business Law* (Kluwer Law International, 2007). The Recommendations addressed many aspects of the legal system, of which the law schools were just one part.

could flourish intellectually through a wide-ranging curriculum taught by scholars and practitioners in an interactive style.¹²

What the proponents of change did not fully appreciate was the strength of the resistance within the system to implementing the full measure of law school reform, at least on the side of the equation promising an 80% nationwide average passing rate on the national bar exam. The forces aligned against the new law school system were anything but powerless and, while they were not able to derail the establishment of law schools that were established under the supervision of the Ministry of Education, Culture, Sports, Science and Technology (MEXT), they were successful in fighting a rear-guard action to limit and control the number of successful bar exam candidates.¹³

The main thrust of the counter-attack was to thwart the goal of the JSRC “to increase the number of successful applicants for a new national bar examination to 3,000 per year in about 2010.”¹⁴ This had the effect, as noted by Colin Jones in his essay, of giving law schools “a pass rate of about 48%” in their first year.¹⁵ That pass rate has continued to plummet (to a bit over 25% in 2010¹⁶) as the intake of students into the law school system gets further out of balance with the artificial quota imposed by the Supreme Court and the Ministry of Justice on successful bar exam takers. Critics are right to question any quota prescribed by a central government (be it 3,000 or something less) that results in preserving guild-like prerogatives at the cost of social needs and, worse, unfairly deprives individuals of an opportunity to pursue their careers of choice.¹⁷

12 In the words of the JSRC: “With regard to the system for legal training, in order to secure legal professionals with suitable quality to undertake the administration of justice in the 21st century, the system shall not consist of selection based upon the ‘single point’ of the national bar examination. Rather, a system for legal training shall be established that consists of a ‘process’ that organically connects legal education, the national bar examination, and apprenticeship training. As the core of the system, graduate schools specialized in training of legal professionals (hereinafter referred to as ‘law schools’) shall be established.”

13 The attack on the system manifested itself in a number of ways. For example, articles appeared in the early days criticizing the knowledge and ability of law school graduates. Some of the more prestigious law firms were understood to have a preference for new lawyers who passed the old bar exam. *See, e.g.,* The Japan Times, editorial, “More good lawyers needed” (July 29, 2008) (“Nichibenren said that since the current system of nurturing legal professionals is still in an evolving stage, attention should be paid to maintaining the quality of people who enter legal profession.”) available online at <http://search.japantimes.co.jp/cgi-bin/ed20080729a1.html> (last accessed on October 2, 2010).

14 REFORM COUNCIL, *supra* note 6.

15 JONES, *supra* note 1, 249.

16 According to the Ministry of Justice, a total of 8,163 people sat for the examination with 2,074 passing.

17 An even better question far beyond the scope of this essay is why there seems to be no capacity (or appetite) to challenge this situation in the courts notwithstanding Article 17 of the Constitution of Japan, which provides: “Every person may sue for redress as provided by law from the State or a public entity, in case he has suffered damage through illegal act of any public official.”

My point in this section is a simple one. The Recommendations of the JSRC promised the establishment of a strong and vibrant law school system capable of producing a well-trained and diverse cadre of legal professionals. Law schools and their students were essentially promised an educational experience where they could learn free from the strictures of a bar exam focused cram school environment. As a consequence, expectations rose on the back of the Recommendations. When political reality set in, and compromise led to backsliding,¹⁸ disappointment among those with high (unrealistic?) hopes for the law school system was bound to follow. This dynamic may well account for much of the overly negative tone of the criticisms. Acknowledging that the sinking bar pass rate has cast a long and dark shadow over the educational environment, it remains true that (i) the law school system launched in a big way and on time, (ii) the pass rate went from 2~3% to ~26%, and (iii) the number of newly minted lawyers each year jumped from around 1,200 in 2003, to 2,074 on the 2010 exam.¹⁹

III. OPEN STANDARDS AND DARWINIAN COMPETITION

It was widely anticipated by many observers that a fixed number of universities of around 20 to 25 (consisting of the “usual suspects”) would be anointed to establish law schools. This would have allowed the system to achieve a nationwide pass rate of 80% by controlling both the intake and the output of the law schools.²⁰ A controlled intake would have eliminated many of the criticisms heard today about the law school system, since they all relate directly or indirectly to pressures on the system caused by the low pass rate on the bar.

Many predict that, in fact, the number of law schools will shrink from the current 74 to a number closer to 20 to 25 over time.²¹ The experience of free market competition will be a bitter pill to swallow for the losers. They might rightfully feel hard done by having relied on the Recommendations of the JSRC. However, if we look at the reforms from the perspective of promoting free market competition, something frequently called

18 The gatekeepers to the bar lost the battle at the JSRC level, but did not stop fighting the war. On reflection, it was somewhat naïve to think that they would.

19 The results under the new bar exam are as follows: 2006 – 1,009 passers for a success rate of 48.3%; 2007 – 1,851 passers for a success rate of 40.2%; 2008 – 2,065 passers for a success rate of 33%; 2009 – 2,043 passers for a success rate of 27.6%; and 2010 – 2,074 for a success rate of 25.4%.

20 South Korea appears to have carefully observed the Japanese experience and learned from it. The number of law schools is limited to 25, and each university establishing a law school is required to abolish its undergraduate faculty of law. The first bar exam under the new law school system will be held in 2012.

21 In fact, one law school has announced that it has stopped taking applications and will close its doors when its current class of students graduates. There are also reports that MEXT has been providing guidance regarding improvement measures to law schools that consistently fail to achieve average pass rates close to the national average.

for by critics of Japan, the open accreditation standards by MEXT were a positive development. Each law school has been afforded a chance to compete by recruiting and educating students capable of passing the bar exam. The survivors will be stronger for having succeeded in a way they would not have if the winners were ordained from the start.

The fairer result would have been, of course, to have this keen competition take place in the legal services marketplace, instead of at the law school level. That battle was lost, however, and it will not likely be re-fought at any time soon. There is still merit in having given each law school a chance to succeed based on results as opposed to resorting to untested perceptions of quality and reputation.²²

Finally, it is axiomatic that whether a person turns out to be a good judge, prosecutor or lawyer must ultimately be judged in the marketplace. If the number of schools had been fixed by MEXT, entry to the profession would have defaulted to entry to a designated law school. There is no guarantee that so-called “elite” schools have any special expertise in picking the ultimate winners in the legal profession. Open competition at the bar exam level can arguably be said to reward the diligent and the able.²³ Institutional affiliation by itself can, on the other hand, mask a lack of relevant ability and skill. Under the current system, graduates who pass the bar from schools that survive will be in a much better position to claim equal status in a way that might not have been possible in a system where entry to a select smaller number of law schools effectively controlled entry to the profession.

IV. IMPROVING QUALITY AND QUANTITY THROUGH THE LAW SCHOOL EXPERIENCE

A driving force behind the Recommendations in support of law schools was the perception that the old bar exam system produced far too many individuals who were socially inexperienced and too narrowly skilled in rote memorization. Individuals spending years sitting at home alone, or in study carrels at cram schools, were not likely to know, or even much care, about how law operates in the real world. The fact a cadre of bright and otherwise potentially productive members of society were spending years studying in isolation was seen by the JSRC as being unhealthy for the individuals as well as for society at large. Moreover, since some successful candidates were potentially warped by prolonged social isolation, and those who became lawyers as a group lacked rich divers-

22 Another tangential benefit of free market competition is in the arena of reputation. While students from most of the so-called “elite” law schools have performed well on the bar exam, some “big name” schools have not done as well as expected. Other schools, not particularly well-known for producing a large number of lawyers, have done better than expected, raising their reputations in law circles.

23 It is another question altogether whether the Japanese bar exam really tests to any material degree the skills and knowledge needed to be an effective judge, prosecutor or lawyer. Arguably, the Recommendations of the JSRC can be read to conclude that it does not.

ity of background and experience, the bar was seen as being incapable of providing the kind of support necessary to facilitate the needs of Japanese society as it moved into the 21st century.

The JSRC once again minced no words in identifying this as a major failing of the old system when it wrote that:

Accompanying future social and economic development, demand for the legal profession is anticipated to increase quantitatively as well as to become further diversified and more sophisticated qualitatively. *Considering the current legal profession in Japan, it can hardly be regarded as being capable of sufficiently responding to the legal demands of the society in any respect.* Therefore, in order to realize the above various institutional reforms in a fruitful manner, it is indispensable to widely expand the quality and quantity of the legal professionals who will play a crucial role as those who directly bear those reforms. (*Emphasis added*)²⁴

The remedy for both the quantitative and the qualitative issue was the law school system, and it has worked much better than many are prepared to admit, albeit not to the degree it might have.

1. *Producing more Lawyers*

I have already discussed above the quantitative problem from the perspective of the falling pass rate and efforts by the bar to erode the 3,000 new lawyers a year target. A 25% pass rate is disappointing relative to the promise going in of an 80% rate. However, when 25% is compared with the old bar exam system high of around 3% it is difficult to conclude that the system has been a failure. The fact that 2,074 people passed the bar in 2010 is clearly better than the 1,201 who passed in 2003 under the old system.²⁵ People who aspire to become lawyers now have an objectively better chance of realizing their ambitions. It may not be perfect, and it may not be fair that potentially excellent future lawyers continue to be stymied for reasons that seem little more than protectionist, but it is still a substantial improvement over the old system.

2. *Producing better Lawyers*

The qualitative problem identified by the JSRC had two main components. The first stemmed from the isolated nature of bar preparation as mentioned above. Law schools directly addressed that issue by bringing candidates out of isolation and into the class-

24 REFORM COUNCIL, *supra* note 6.

25 Ministry of Justice press release available online at www.moj.go.jp/jinji/shihoushiken/press_031010-1_15ron-univ.html (last accessed on October 2, 2010).

room.²⁶ Naturally, students are still required to spend long hours studying in carrels and preparing for classes. There is no doubt, however, that the law school system provides students with vastly greater opportunities to learn in a collegial environment. Students can, and do, ask questions and debate policy, principles and applications of law with faculty and classmates alike. They also socialize with other students and have a chance to hear different perspectives on law and society.²⁷ It is difficult to describe, without seeing it firsthand, the excitement and commitment among Japanese law students. Their dedication and desire rivals that of any foreign law students.

The fact that students must still “cram” for the bar in light of the one in four chance of passing clearly impedes academic freedom, but it does not destroy it. Japanese students should be expected to master core areas of law that are tested on the bar exam. It is a fiction that students do not do the same in American law schools. Japan is, after all, a civil law country and it would be strangely inappropriate if the methods of studying were identical to those in the U.S. Yet, most law schools maintain a rich curriculum of elective courses that expose students to a broad range of topics and allow for the pursuit of individual intellectual interests.

Some law schools offer courses in languages other than Japanese as well as opportunities to study with law students from abroad or to go on exchange programs.²⁸ Others operate clinics and workshops where students can get hands-on experience and learn about law in the context of real world problems. These kinds of programs are not the hallmark of a “cram school” environment and they go a long way towards producing well-balanced future lawyers with a solid sense of their role and responsibility in Japanese society.²⁹

3. *Producing better Teachers*

The second problem with quality can be traced directly to the nature of the undergraduate system of legal education. Law professors have generally been seen as focusing exclusively on legal theory (the “Ivory Tower” syndrome writ large) and divorcing themselves from the practical aspects and implications of law in society. Most undergraduate law professors have traditionally had little or no real world experience prior to

26 A frequently heard comment from law students in the first and second years of operation was how grateful the students were to be able to study law in an active classroom environment with other students.

27 In the first two years of the law school system when students had a real option to try to pass the bar without going to law school, a frequent comment by students was how satisfying it was to study in an environment with other people.

28 Keio Law School, by way of example, offered 17 courses in English in the current academic year. This semester we have eight exchange students from seven different law schools studying at Keio. Keio and Waseda Law School permit students to cross-register for certain courses, further enriching the educational experience.

29 The analogy used by the JSRC was “doctors for the people’s social lives.”

entering academia and could not be expected to teach practical applications. They tended to teach their classes in the same manner as they learned as students, i.e., a one-way street where the teachers talk and the students listen (or not).

Students coming to law faculties as undergraduates at most universities (even those noted for producing lawyers) rarely have a keen interest in becoming lawyers. Law is seen by most students as a prestigious department to enter and an easy gateway to a job in a company. Most law faculty graduates did not take the bar exam under the old system, or even actively seek jobs in company law departments. Universities with a very high student to teacher ratio appreciated the efficiency of teaching large numbers of students in vast lecture halls and law lent itself remarkably well to this. Large lecture formats do not promote active participation, and students in such classes are not expected, or encouraged, to ask questions or to engage in debate.³⁰ Although few professors would be willing to admit it, teaching large classes of students who have no idea why they are there, and even less interest in being there, can be intellectually deadening for teacher and student alike. This may account for why so some undergraduate law teachers (this phenomenon is not limited to the law faculties) reportedly do little more in class than read their lecture notes.

The law school system has successfully eradicated this educational disaster on virtually every level.³¹ The number of students in each class is limited and teachers are expected to provoke and stimulate thought. When a professor looks out on a law school class, he or she can be assured that all of the students there have a burning desire to gain command of the topic. A classroom of sharp students feeds off of itself and pushes the professor to deliver a meaningful classroom experience. Japanese professors have largely risen to the occasion and have made great strides in developing interactive teaching skills. Law is now taught through a blend of theory and hypothetical questions based on real cases. This was an objective of the JSRC and it has been met.

There is one additional point worth making in this connection. In response to the Recommendations, virtually every law school recruited judges, prosecutors and lawyers to their faculties. This required, in the case of judges and prosecutors, revisions to the

30 If one were inclined to high optimism, there is a further trickle down benefit that might be hoped for at the undergraduate level as a result of the law school system. Heretofore grades played little or no role in job seeking or access to the professions. Since GPA is an important factor for getting accepted to law school, at least to those schools perceived as being successful in producing graduates who can pass the new bar exam, undergraduate students desiring to become lawyers will have to study harder in order to achieve good grades. The move towards professional schools in fields like accounting, business and law could have the eventual impact of revitalizing undergraduate education.

31 Unlike the case of South Korea, the establishment of the law school system in Japan will likely not result in the eventual closure of the undergraduate law faculties. This would have clearly helped the law schools by making universities put all of their eggs in one basket. Nevertheless, there is some continued utility to maintaining undergraduate law programs given that most graduates will not pursue a career in law, and some knowledge of law is increasingly important in business and society.

law governing their tenure as public officials. This was accomplished and Japanese law students now have access to people from the front-lines of legal practice to a degree that could never have been contemplated under the old system. The merit here goes two ways. The students learn how law really works, while judges, prosecutors and practitioners have an opportunity to step back and reflect on what they do on a daily basis. Some of these professionals teach as adjuncts. Others take up fixed term position on law school faculties that give them additional opportunities to think about the law in a broader context. The result is an enriching of both the students and the profession.

V. CONCLUSION

The law school system is flawed, but not broken. To the extent there has been a problem in implementing the Recommendations of the JSRC, it has resided in the form of an artificial quota on the number of persons permitted to pass the bar exam each year. The reality is that the bar exam problem is not likely to go away any time soon even though the quota is indefensible on other than protectionist grounds.

To its credit, the law school system launched as scheduled and is also not likely to disappear in the future. The educational programs of Japanese law schools are, for the most part, pedagogically sound. They are capable of producing the kinds of lawyers Japanese society requires and can be opened up whenever the need becomes strong enough to overcome the forces of resistance. More importantly, the basic parameters of the system are now too deeply rooted to be abolished. Adjustments will clearly have to be made in the future but the law schools (and, indirectly through them, the students) now have a stake and a say in how the system of training lawyers will evolve.

The evolution of the law school system must be monitored closely. It is a work in progress. But, for now, I hope that some readers will choose to see the glass as half full, as I do, rather than half empty.

ABSTRACT

In 2001, the Judicial System Reform Council (JSRC) issued Recommendations aimed at radically overhauling virtually every aspect of the justice system in Japan. The JSRC Recommendations were based on the belief that the old system of training and admitting lawyers to the bar was not up to meeting the challenges faced by Japan at the opening of the 21st century. Among other things, the Recommendations called for the establishment of a nationwide post-graduate professional law school system capable of increasing both the number and the quality of legal professionals. With respect to the number of lawyers, the law school system was expected to produce 3,000 new lawyers a year by 2010, with an approximate pass rate on the national bar of 80%. Quality was to be achieved by adopting an inter-active “two way street” style of education in small class settings taught by academics, judges, prosecutors and practicing attorneys.

The Recommendations created unrealistically high expectations for the law school system. Politically powerful institutional stakeholders such as the Supreme Court, the Ministry of Justice and the Japanese Federation of Bar Associations (Nichibenren) took protectionist steps to reduce the quota on successful candidates. The most recent bar exam saw 2,074 people pass for a passing rate of only slightly more than 25%. This has had a detrimental impact on the law school experience and has led many critics to question the continuing viability of the law school system.

This article acknowledges the flaws in the system largely created by the quota on successful bar passers, but argues that we should not lose sight of the many accomplishments already realized by the law schools. The passing rate is lower than the expected 80% but still substantially higher than the 2~3% under the old bar exam system. More importantly, law schools have changed the way that law is taught in Japan resulting in direct benefits to faculty and students alike. While not perfect, the system is sound and represents definite improvement on the quality and quantity of lawyers in Japan. Recognizing the important successes of the law school system will better inform those who seek to make adjustments over the coming years.

ZUSAMMENFASSUNG

Im Jahre 2001 hat die Kommission zur Reform des Justizwesens ihre Vorschläge zu grundlegenden Veränderungen in praktisch allen Bereichen der Justiz in Japan vorgelegt. Die Empfehlungen beruhen auf der Annahme, dass das alte System der Ausbildung und Zulassung zur Anwaltschaft nicht in der Lage sei, die Herausforderungen zu bewältigen, mit denen sich Japan am Beginn des 21. Jahrhunderts konfrontiert sieht.

Unter anderem schlug die Kommission vor, landesweit ein System postgraduierter professioneller law schools einzuführen, die in der Lage wären, sowohl die Zahl als auch die fachliche Qualität der praxisorientierten Juristen zu erhöhen. Bis zum Jahre

2010 sollte die Zahl der Absolventen auf 3.000 pro Jahr angestiegen sein, wobei 80 % der Kandidaten eines Jahrganges das für die weitere Ausbildung und spätere Zulassung als Rechtsanwalt entscheidende Examen bestehen sollten. Die Qualität der Ausbildung sollte durch eine diskursive Unterrichtsmethode in kleinen Klassen gesichert werden, in denen neben den akademischen Lehrern auch Praktiker, also Richter, Staatsanwälte und Rechtsanwälte, unterrichten sollten.

Die Empfehlungen haben unrealistisch hohe Erwartungen an die Reform der Juristenausbildung geweckt. Politisch einflussreiche institutionelle stakeholders wie der Oberste Gerichtshof, das Justizministerium und der Verband der Japanischen Anwaltskammern (Nichibenren) haben protektionistische Schritte unternommen, um die Zahl der Absolventen niedrig zu halten. Die jüngste Statistik weist 2.074 Absolventen des Examens bei einer Erfolgsquote von etwas über 25 % aus. Dies hat sich negativ auf die Einschätzung der law schools ausgewirkt, und Kritiker stellen bereits die Zukunft des neuen Ausbildungssystems in Frage.

Der Beitrag bestreitet die derzeitigen Schwachstellen in der Ausbildung, die namentlich durch die Festlegung der Zahl der erfolgreichen Absolventen verursacht werden, nicht, gibt aber zu bedenken, dass man die zahlreichen bereits errungenen Erfolge nicht aus dem Blick verlieren sollte. Auch wenn die Erfolgsquote weit unter den angestrebten 80 % liegt, ist sie gleichwohl wesentlich höher als die frühere Erfolgsquote von 2-3 % im alten System. Vor allem haben die law schools die Art und Weise, in der in Japan Recht unterrichtet wird, zum Vorteil aller fundamental verändert. Auch wenn das neue System noch nicht perfekt funktioniert, steht es doch auf einem soliden Fundament und hat Zahl und Qualität der Rechtsanwälte in Japan nachhaltig erhöht. Diese positiven Aspekte sollten im Vordergrund stehen, wenn über künftige Veränderungen in der Juristenausbildung nachgedacht wird.